UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Frank Betz Associates, Inc., Plaintiff, vs. Landmark Homes of Tennessee, Inc. and Gary Wisniewski, Defendants.	C.A. No.: _______________

COMPLAINT

Plaintiff Frank Betz Associates, Inc. ("Betz"), alleges the following against Landmark Homes of Tennessee, Inc. ("Landmark Homes") and Gary Wisniewski ("Wisniewski"), (collectively "defendants") as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Betz is a Georgia corporation having its principal place of business in Kennesaw, Georgia.

2. Defendant Landmark Homes is a Tennessee corporation with its principal place of business in Mount Juliet, Tennessee.

3. Defendant Gary Wisniewski is the President of Landmark Homes and a resident of Tennessee.

4. The defendants have built, advertised and sold houses in Tennessee and otherwise conducted business in Tennessee.

5. This is an action at law and in equity for copyright infringement arising under the laws of the United States of America, codified at 17 U.S.C. §§ 101 *et seq.*

6. This court has exclusive federal jurisdiction over the subject matter of the plaintiff's claim under 28 U.S.C. § 1338.

7. The defendants are subject to the personal jurisdiction of this Court because they solicit and/or transact business in this district on a regular basis, because acts complained of herein occurred and are occurring in this district, and because the defendants' conduct has caused injury in this district.

8. Venue in this district is proper under 28 U.S.C. § 1400(a) in that the defendants or their agents reside or may be found in this district.

FACTUAL BACKGROUND

Betz and Its Original Works

9. Betz is engaged in the business of creating, designing, producing, distributing, marketing, and licensing original architectural works, architectural working drawings, and related technical drawings for residential designs. Betz has achieved national recognition for the quality and originality of its work.

10. As to each of the Betz designs at issue in this action (identified individually below), each such design was created by a Betz designer either starting with a blank piece of paper or modifying an existing Betz design that began with a blank piece of paper and was created as described herein. For each such design,

a. the arrangement, composition, and proportions of exterior features and massing came from the designer's mind and creativity;

b. the shape, size, location, and proportions of interior spaces came from the designer's mind and creativity;

c. the placement of design features and elements came from the designer's mind and creativity; and

d. the placement of architectural details came from the designer's mind and creativity.

11. Putting together all of the pieces and shapes that make up each of the Betz designs at issue in this action is a product of the designer's creativity. The overall configuration and arrangement of spaces, elements and features in the design is not a collection or compilation of standard rooms and elements or pre-existing forms. To the contrary, the shapes and sizes of the rooms and spaces, the shapes and sizes of the exterior elements and features, and the piecing together and placement of all of the spaces, design features and other architectural details to fit them into an overall whole come from the mind and creativity of the designer as the design is being created.

12. In creating each of the Betz designs at issue in this case, the designer had many different architectural and design styles and hybrid styles to choose from, both as to the exterior and interior; a wide range of possible overall square footages; infinite variations of the shape of the exterior "footprint" and exterior elevations; and infinite variations of how and where the designer placed rooms and spaces together within the footprint and how these in turn affected the exterior elevations; all of which came from the designer's hard work, imagination, and creativity, and not through collecting and assembling standard or pre-existing forms.

13. As part of its business, Betz has created the following architectural works and/or technical drawings (collectively referred to, along with any predecessors or derivatives thereof,

as the "Betz Designs"), with respect to each of which the preceding allegations are incorporated by reference:

a. Aldridge;

b. Defoors Mill;

c. Troville;

d. Stoneheath;

e. Shackleford;

f. Chesdin;

g. Habersham;

h. Merrick;

i. Southwick; and

j. Shelby.

14. The copyright in each of the Betz Designs has been registered with the United States Copyright Office.

15. The Betz Designs contain material wholly original to Betz that is copyrightable subject matter under 17 U.S.C. §§ 101 et seq.

16. Betz is currently, and at all relevant times has been, the sole owner of all right, title and interest in and to the copyrights in the Betz Designs.

17. All lawful copies and distributions of the Betz Designs have been made by Betz, or under Betz's consent or permission.

18. The Betz Designs have been marketed and distributed on at least a nationwide basis, and the defendants have had access to them.

The Defendants and Their Actions

19. The defendants are in the business of building, constructing, marketing, advertising, and/or selling houses through traditional print media, electronic media, and the World Wide Web.

20. The defendants have published, distributed, marketed, sold, and/or advertised certain architectural designs for single family residential homes, each consisting of a floor plan and exterior elevations, and have built, constructed, marketed, advertised, and sold homes constructed using those architectural designs, with the following plan names: "Thomas," "Copper Creek," "Rockford," "Miami," "Shackleford," "Shackleford II," "Chesdin," "Galveston," "Merrick," and "Southwick" (collectively referred to, along with any predecessors, copies, or derivatives thereof, under the same or different names, as the "Infringing Designs").

21. On information and belief, defendant Wisniewski has a financial interest in the affairs and activities of the defendant Landmark Homes.

22. On information and belief, defendant Wisniewski controls and has the power to control the affairs and activities of the defendant Landmark Homes.

23. On information and belief, defendant Wisniewski has the right and ability to supervise the infringing activity of the defendant Landmark Homes as alleged herein.

COPYRIGHT INFRINGEMENT AS TO ALL DEFENDANTS
(17 U.S.C. §§ 101 *et seq.*)

24. Betz reiterates and realleges the above allegations.

25. The defendants have violated and, upon information and belief, continue to violate Betz's exclusive rights in the Betz Designs and, upon information and belief, other of Betz's copyrighted designs (including the right to reproduce, right to prepare and sell derivative works, and right to vend) by copying, publishing, distributing, advertising, marketing, selling,

building, and/or constructing in the marketplace in this district, and all marketplaces reached by the World Wide Web, architectural works, constructed buildings, and/or drawings which were copied or otherwise derived from the Betz Designs, in that each of the following Infringing Designs of the defendants (and any copies or derivatives thereof under the same name or a different name) infringes the respective Betz Design (and any predecessor or derivative thereof):

26.

a. The defendants' "Thomas" (and any copies or derivatives thereof under the same name or a different name) infringes Betz's "Aldridge" (and any predecessor or derivative thereof).

b. The defendants' "Copper Creek" (and any copies or derivatives thereof under the same name or a different name) infringes Betz's "Defoors Mill" (and any predecessor or derivative thereof).

c. The defendants' "Rockford" (and any copies or derivatives thereof under the same name or a different name) infringes Betz's "Troville" (and any predecessor or derivative thereof).

d. The defendants' "Miami" (and any copies or derivatives thereof under the same name or a different name) infringes Betz's "Stoneheath" (and any predecessor or derivative thereof).

e. The defendants' "Shackleford" and "Shackleford II" (and any copies or derivatives thereof under the same name or a different name) infringe Betz's "Shackleford" (and any predecessor or derivative thereof).

f. The defendants' "Chesdin" (and any copies or derivatives thereof under the same name or a different name) infringes Betz's "Chesdin" (and any predecessor or derivative thereof).

g. The defendants' "Galveston" (and any copies or derivatives thereof under the same name or a different name) infringes Betz's "Habersham" (and any predecessor or derivative thereof).

h. The defendants' "Merrick" (and any copies or derivatives thereof under the same name or a different name) infringes Betz's "Merrick" (and any predecessor or derivative thereof).

i. The defendants' "Southwick" (and any copies or derivatives thereof under the same name or a different name) infringes Betz's "Southwick" (and any predecessor or derivative thereof).

j. Certain plans of the defendants, the names of which are not now known to Betz (and any copies or derivatives thereof under the same name or a different name) infringe Betz's "Shelby" (and any predecessor or derivative thereof).

27. For each Infringing Design, in relation to the respective infringed Betz Design, the overall arrangement and composition of spaces in the design, the placement of design features and elements, the size and shape of the exterior elevations, the relative size, shape, locations and proportions of individual rooms and elements in the design, and how all of these spaces, elements, and features are combined in the design as a whole, are substantially similar to the corresponding aspects of each respective infringed Betz Design, all of which are original to Betz.

28. For all of the similarities between the corresponding designs, these similar spaces, arrangements and features do not have to be designed the way they are designed, are not dictated by construction requirements, code requirements, or utilitarian concerns, could have been done in numerous different ways, and do not derive from a collection and assembly of standard shapes and forms that already existed.

29. In addition to liability for his own actions, the defendant Gary Wisniewski is vicariously liable for the above-discussed copyright infringement in that he has control and the power to control the affairs and activities of the defendant Landmark Homes, he has the right and ability to supervise the infringing activity of defendant Landmark Homes, and he has a direct financial interest in such activities.

30. As a direct and proximate result of the defendants' wrongful conduct, Betz has been damaged.

31. The defendants' infringement of Betz's copyrights has been and continues to be committed willfully.

32. Betz generally avers that all conditions precedent to its rights of recovery have occurred or have been performed.

RELIEF SOUGHT

WHEREFORE, Betz prays that this honorable Court do the following as to the defendants:

1. Permanently enjoin and restrain these defendants, their officers, directors, principals, agents, servants, employees, heirs, personal representatives, executors, successors, and assigns, and all those in active concert or participation with it, from:

a. imitating, copying, or making any unauthorized use of the Betz Designs, any other of Betz's copyrighted designs, the Infringing Designs, or any predecessors or derivatives thereof in any manner, and from publishing, distributing, selling, advertising, marketing, building, constructing or otherwise disposing of any copies or derivatives of the Betz Designs, any other of Betz's copyrighted designs, and predecessors or derivatives thereof, including, but not limited to, the Infringing Designs;

b. manufacturing, producing, building, constructing, distributing, circulating, selling, offering for sale, advertising, promoting, or displaying any product bearing any simulation, reproduction, counterfeit, copy, derivative, or colorable imitation of the Betz Designs, any other of Betz's copyrighted designs without appropriate license from Betz, and any predecessors or derivatives thereof, including, but not limited to, the Infringing Designs; and

c. using any simulation, reproduction, counterfeit, copy, derivative, or colorable imitation of Betz Designs, any other of Betz's copyrighted designs without appropriate license from Betz, or any predecessors or derivatives thereof, including, but not limited to, the Infringing Designs, in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, building, construction, circulation, or distribution of any product or service.

2. Direct these defendants to deliver up to be impounded during the pendency of this action under 17 U.S.C. § 503 all copies or derivatives of the Infringing Designs, the Betz Designs, any other of Betz's copyrighted designs without appropriate license from Betz, or of any predecessors or derivatives thereof in these defendants' possession or under these defendants' control and to deliver up for destruction those designs and all infringing copies and

all devices used for making such infringing copies, including any homes that have been constructed in violation of Betz's copyrights.

3. Direct these defendants to disclose to Betz the names and addresses of all persons and entities who have purchased or licensed the Infringing Designs and any and all other of these defendants' designs copied or derived from any Betz copyrighted design without appropriate license from Betz, who have had homes constructed from any of such designs, or who have purchased homes constructed from them.

4. Direct these defendants to issue a recall notice to each person who has purchased or licensed the Infringing Designs and any and all other of these defendants' designs copied or derived from any copyrighted Betz design without appropriate license from Betz, or who has had a home constructed from any of such designs, or who has purchased a home constructed from any of such designs, informing each such person that such design has been determined to constitute an infringement of Betz's copyright and that the person cannot resell or vend such design or any home constructed from it without the permission of Betz.

5. Direct these defendants to pay Betz such damages as the jury determines Betz has sustained in consequence of these defendants' infringing Betz's copyrights, and to account for and pay Betz damages for all gains, profits, and advantages derived by defendants by their infringements of Betz's copyrights under 17 U.S.C. § 504(b), or at Betz's election, statutory damages under 17 U.S.C. § 504(c), which permits a recovery of up to $150,000 for infringement of each copyrighted work, in the event the jury determines willful infringement by these defendants.

6. Direct these defendants to pay Betz's costs of this action and its reasonable attorney's fees allowable to Betz by the Court under 17 U.S.C. § 505.

7. Award to Betz such other and further relief as the Court may consider appropriate.

8. Betz requests a jury trial as to all matters other than the equitable remedies sought herein.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF